

RECEIPT # _____
 AMOUNT \$ _____
 SUMMONS ISSUED _____
 LOCAL RULE 4.1 _____
 WAIVER FORM _____
 MCF ISSUED _____
 BY DPTY. CLK. _____
 DATE _____ *7-14-04*

FILED
U.S. DISTRICT COURT
DISTRICT OF MASS.

JUL 12 P 3:25

U.S. DISTRICT COURT
DISTRICT OF MASS.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FIREMAN'S FUND INSURANCE
COMPANY
As Subrogee of
Hodan Properties, Inc.
777 Marin Drive
Novato, California 94998
Plaintiff

CIVIL ACTION NO.

04 - 11578 PBS

v.
FIRE SYSTEMS, INC.
955 Reed Road
North Dartmouth, MA 02747

JURY TRIAL DEMANDED

MAGISTRATE JUDGE *Chen*

and
FIRE SUPPRESSION SYSTEMS OF
NEW ENGLAND, INC.
70 Bacon Street
Pawtucket, RI 02860

and
PRO CON, INC.
1359 Hooksett Road
Hooksett, NH 03106

and
BRIERE & PAQUETTE, INC. f/k/a
PAQUETTE ELECTRIC CO., INC.
63 Alden Street, P.O. Box 4160
Fall River, MA 02723
Defendants

JULY 9, 2004

COMPLAINT

NOW COMES Plaintiff, Fireman's Fund Insurance Company (hereinafter "FFIC") by and through its undersigned counsel, hereby demands judgment against Defendant Fire Systems, Inc. (hereinafter "Fire Systems"), Defendant Fire Suppression Systems of New England, Inc. (hereinafter "Fire Suppression"), Defendant Pro Con, Inc. (hereinafter "Pro Con") and Defendant Briere & Paquette, Inc. f/k/a Paquette Electric Co., Inc. (hereinafter "Paquette Electric"), and in support thereof avers as follows:

1. Plaintiff, "FFIC" is a corporation organized and existing under laws of the State of California with a principal place of business at 777 San Marin Drive, Novato, California 94998 which at all times material hereto was duly authorized to issue insurance policies in the Commonwealth of Massachusetts.

2. Defendant Fire Systems is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business located at 955 Reed Road, North Dartmouth, MA 02747.

3. Defendant Fire Suppression is a corporation duly organized and existing under the laws of the State of Rhode Island with a principal place of business located at 70 Bacon Street, Pawtucket, RI 02860.

4. Defendant Pro Con is a corporation duly organized and existing under the laws of the State of New Hampshire with a principal place of business located at 1359 Hooksett Road, Hooksett, NH 03106.

5. Defendant Paquette Electric is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, with its principal office located at 63 Alden Street, P.O. Box 4160, Fall River, MA 02723

JURISDICTION AND VENUE

6. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1332(a). The matter in controversy exceeds, exclusive of interest and costs, the sum of One Million Eight Hundred and Twenty Eight Thousand Four Hundred and Eighty Three Dollars (\$1,828,483.00) and there is diversity of citizenship between Plaintiff and Defendants.

7. Venue in this action is in the District of Massachusetts pursuant to 28 U.S.C. §1391 as the claim arose in this district.

GENERAL ALLEGATIONS

8. Plaintiff's insured, Hodan Properties, Inc. (hereinafter "Hodan"), at all times mentioned herein was the owner of the commercial real property known as Marriot Residence Inn, located at 181 Faunce Corner Road, North Dartmouth, MA (hereinafter referred to as "the premises").

9. Prior to January 19, 2003, FFIC issued a policy of insurance to Hodan, Policy Number MZX80803214 which provided insurance coverage for the premises.

10. At all times relevant to this complaint, Defendant Fire Systems was engaged in the fire alarm and fire suppression systems business and was responsible for inspecting, testing and/or maintaining the fire alarm and fire suppression system located at the premises.

11. At all times relevant to this complaint, Defendant Fire Suppression was engaged in the fire alarm and fire suppression systems business and was responsible for installing the fire suppression system at the premises.

12. At all times relevant to this complaint, Defendant Pro Con was engaged in the construction business as a general contractor and was responsible for the construction,

and supervision of construction of the premises.

13. At all times relevant to this complaint, Defendant Paquette Electric was engaged in the electrical device installation business and was responsible for the installation of the alarm system located at the premises.

14. On January 19, 2003, a pipe burst in the dry-pipe fire suppression system located at the premises causing extensive damage.

15. In due course, FFIC was notified by its insured that the insured premises had been damaged on or about January 19, 2003.

16. Pursuant to the terms and conditions of the policy, FFIC made payments to its insured in excess of \$1,828,483.00.

17. Pursuant to the principles of legal and equitable subrogation, as well as the terms and conditions of the aforementioned policy of insurance, FFIC is subrogated to the rights of its insured.

COUNT 1
BREACH OF CONTRACT
(FFIS vs. FIRE SYSTEMS)

18. The Plaintiff incorporates by reference each and every allegation set forth above and below as though the same were fully set forth herein at length.

19. On or about June 6, 2002, Hodan contracted with Fire Systems, via written agreement, for Fire Systems to test and inspect the fire alarm and fire suppressions systems at the premises for a period of twelve months.

20. Fire Systems breached aforesaid contract by:

- (a) Failing to properly and adequately test the fire alarm system at the premises; and

- (b) Failing to properly and adequately test the fire suppression system at the premises.

21. As a direct and proximate result of the aforesaid breach of contract, the loss referred to in paragraph 14 occurred.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Fire Systems in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper.

COUNT II
NEGLIGENCE
(FFIS vs. FIRE SYSTEMS)

22. Plaintiff incorporates by reference each every allegation as set forth above and below as though the same were fully set forth herein at length.

23. The damages sustained by the Plaintiff's insured were caused by the negligence, carelessness, negligent acts, and omissions of the Defendant Fire Systems, its agents, servants, and/or employees acting within the scope and course of their employment. Said negligence, carelessness, and negligent acts and omissions included without limitation, the following:

- (a) Failing to properly and adequately inspect and/or test the fire alarm system at the premises;
- (b) Failing to drain the dry sprinkler system after its testing;
- (c) Failing to properly and adequately inspect and/or test the fire suppression system at the premises;
- (d) Failing to detect problems with the installation and design of the

dry sprinkler system;

- (e) Failing to notify the Plaintiff's insured of defects in the design or installation of the dry sprinkler system; and
- (f) Otherwise failing to use due care under the circumstances.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Fire Systems in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper .

COUNT III
BREACH OF CONTRACT
(FFIS vs. FIRE SUPPRESSION)

22. The Plaintiff incorporates by reference Paragraphs 1 through 17 as though the same were fully set forth herein at length.

23. Prior to January 19, 2003, Hodan and/or its agents, servants, and/or employees acting within the scope and course of their employment, contracted with Fire Suppression to install a fire suppression system at the premises, including, but not limited to, a dry-pipe sprinkler system.

24. Fire Systems breached aforesaid contract by:

- (a) Failing to properly and adequately install the fire suppression system at the premises; and
- (b) Failing to ensure that the fire suppression system was functional and safe.

25. As a direct and proximate result of the aforesaid breach of contract, the loss referred to in paragraph 14 occurred.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Fire Suppression in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper.

COUNT IV
NEGLIGENCE
(FFIS vs. FIRE SUPPRESSION)

26. Plaintiff incorporates by reference Paragraphs 1 through 17 as though the same were fully set forth herein at length.

27. The installation activities conducted by the Defendant Fire Suppression and the resulting damages sustained by the Plaintiff were caused by the negligence, carelessness, negligent acts, and omissions of the Defendant Fire Suppression, its agents, servants, and/or employees acting within the scope and course of their employment. Said negligence, carelessness, and negligent acts and omissions included without limitation, the following:

- (a) Failing to properly and adequately install the fire suppression system at the premises;
- (b) Failing to properly and adequately ensure that the fire suppression system was functional and safe;
- (c) Failing to properly inspect the fire suppression system;
- (d) Failing to install and design the piping of the fire suppression system with the proper pitch;
- (e) Failing to purge the fire suppression system of water after its testing; and
- (f) Otherwise failing to use due care under the circumstances.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Fire Suppression in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper.

COUNT V
BREACH OF CONTRACT
(FFIC vs. PRO CON)

28. The Plaintiff incorporates by reference Paragraphs 1 through 17 as though the same were fully set forth herein at length.

29. Prior to January 19, 2003, Hodan and/or its agents, servants, and/or employees acting within the scope and course of their employment its contracted with Pro Con to act as general contractor for the construction of the premises, including, but not limited to, the fire alarm and fire suppression systems.

30. Pro Con breached aforesaid contract by:

- (a) Failing to properly and adequately install the fire suppression system at the premises;
- (b) Failing to ensure that the fire suppression system was functional and safe;
- (c) Failing to properly and adequately install the fire alarm system at the premises; and
- (d) Failing to properly and adequately ensure that the fire alarm system was functional and safe;

31. As a direct and proximate result of the aforesaid breach of contract, the loss referred to in paragraph 14 occurred.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Pro Con in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper.

COUNT VI
NEGLIGENCE
(FFIS vs. PRO CON)

32. Plaintiff incorporates by reference Paragraphs 1 through 17 as though the same were fully set forth herein at length.

33. The damages sustained by the Plaintiff's insured were caused by the negligence, carelessness, negligent acts, and omissions of the Defendant Pro Con, its agents, servants, and/or employees acting within the scope and course of their employment. Said negligence, carelessness, and negligent acts and omissions included without limitation, the following:

- (a) Failing to properly oversee and inspect the installation of the fire suppression system at the premises;
- (b) Failing to properly oversee and inspect the installation of the fire alarm system at the premises;
- (c) Otherwise failing to use due care under the circumstances.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Pro Con in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper.

COUNT VII
BREACH OF CONTRACT
**(FFIS vs. BRIERE & PAQUETTE, INC. F/K/A
PAQUETTE ELECTRIC, CO. INC.)**

34. The Plaintiff incorporates by reference Paragraphs 1 through 17 as though the same were fully set forth herein at length.

35. Prior to January 19, 2003, Hodan and/or its agents, servants, and/or employees acting within the scope and course of their employment its contracted with Paquette Electric to install a fire alarm system at the premises.

36. Paquette Electric breached aforesaid contract by:

- (a) Failing to properly and adequately install the fire alarm system at the premises; and
- (b) Failing to ensure that the fire alarm system was functional and safe.

37. As a direct and proximate result of the aforesaid breach of contract, the loss referred to in paragraph 14 occurred.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Paquette Electric in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper.

COUNT VIII
NEGLIGENCE
**(FFIS vs. BRIERE & , INC. F/K/A
PAQUETTE ELECTRIC CO., INC.)**

38. Plaintiff incorporates by reference Paragraphs 1 through 17 as though the same were fully set forth herein at length.

39. The damages sustained by the Plaintiff's insured were caused by the negligence, carelessness, negligent acts, and omissions of the Defendant Paquette Electric, its agents, servants, and/or employees acting within the scope and course of their

employment. Said negligence, carelessness, and negligent acts and omissions included without limitation, the following:

- (a) Failing to properly and adequately install the fire alarm system at the premises;
- (b) Failing to properly and adequately ensure that the fire alarm system was functional and safe;
- (c) Failing to properly test and inspect the fire alarm system; and
- (d) Otherwise failing to use due care under the circumstances.

WHEREFORE, Plaintiff FFIC demands judgment against the Defendant Paquette Electric in excess of \$1,828,483.00 together with interest, costs of this action and such other and further relief as this court deems just and proper.

Dated: July 9, 2004

THE PLAINTIFF,

By: _____.

Erik Loftus, Esq.

Law Offices of Stuart G. Blackburn
2 Concorde Way
P.O. Box 608
Windsor Locks, CT 06096
Tel. (860) 292-1116
Fax (860) 292-1221
BBO # 656315

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I (a) PLAINTIFFS

Fireman's Fund Insurance Company a/so Hodan Properties, Inc.

FILED
U.S. DISTRICT COURT

DEFENDANTS

Fire Systems, Inc.; Fire Suppression Systems of New England, Inc.; Pro Con, Inc.; and Brie & Paquette, Inc. f/k/a Paquette Electric Co. Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Bristol
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (U.S.
(U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Erik Loftus, Esq.
Law Offices of Stuart G. Blackburn
Two Concorde Way, PO Box 608
Windsor Locks, CT 06096
860-292-1116

ATTORNEYS (IF KNOWN)

04-11578 PBS

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT Plaintiff
 2 U.S. GOVERNMENT Defendant

- 3 FEDERAL QUESTION (U.S. Government Not a Party)
 4 DIVERSITY (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place Of Business in This State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place Of Business in Another State	PTF <input checked="" type="checkbox"/> 5	DEF <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-- Med Malpractice	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 423 Withdrawal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-- Product Liability	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input checked="" type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Agriculture	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 420 Other Food & Drug	<input type="checkbox"/> 892 Economic Stabilization	
		<input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 893 Environmental Matters	
		<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 894 Energy Allocation Act	
		<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 895 Freedom of Information Act	
		<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
		<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 950 Constitutionality of State Statutes	
		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 890 Other Statutory Actions	
			SOCIAL SECURITY	
			<input type="checkbox"/> 861 HIA (1395f)	
			<input type="checkbox"/> 862 Black Lung (923)	
			<input type="checkbox"/> 863 DW/C/DINWW (405(g))	
			<input type="checkbox"/> 864 SSDI Title XVI	
			<input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	

V. ORIGIN

(PLACE AND X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Common law negligence/Breach of contract

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND in excess of \$1,828,483.00 Check YES only if demanded in complaint:
 UNDER F.R.C.P. 23 JURY DEMAND: YES NO

VIII. RELATED CASES(S)
IF ANY

(See instructions):

NONE

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

7-9-04

FOR OFFICE USE ONLY

RECEIPT# _____ AMOUNT _____ APPLYING IFFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Fireman's Fund Insurance Company a/s/o Hodan Properties, Inc. v. Fire System Inc., et al

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820^u, 830*, 840*, 850, 880, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

04-11578 PBS

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2203)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, In which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Erik Loftus, Esq., Law Offices of Stuart G. Blackburn

ADDRESS Two Concorde Way, PO Box 608, Windsor Locks, CT 06096

TELEPHONE NO. 860-292-1116